Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

PATRICIA MARTIN,

Petitioner,

v.

MICHAEL MARTIN,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of New Hampshire

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Does a forward-looking injunction which conditionally prohibits a prospective litigant from filing a pleading initiating a post-divorce custody proceeding, unless the prospective litigant first participates in a non-judicial process, which is neither specified nor promulgated by statute and/or administrative rule, violate the prospective litigant's procedural right to an opportunity to be heard, as guaranteed through the Due Process Clause of the 14th Amendment to the Constitution of the United States of America?

2. Does a forward-looking injunction which conditionally prohibits a litigant from initiating a post-divorce child custody proceeding, unless the litigant first participates in an undefined non-judicial process which is not promulgated by rule or statute, violate the litigant's fundamental substantive rights as a parent and right to access the Courts, as guaranteed by the 14th Amendment to the Constitution of the United States of America?

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgment below.

OPINIONS BELOW

This case originated in the State of New Hampshire Judicial Branch – Concord Family Division, Case No. 627-2007-DM-105. Pursuant to statewide judicial practice, the Concord Family Division entered a custody order as part of an initial Decree of Divorce, Appendix B, unpublished. The form used by the Trial Court is a form produced by the New Hampshire Administrative Office of the Courts. This form contains a provision barring both parents from seeking subsequent judicial review without first engaging in a non-judicial process, which is completely undefined by statute or, rule. Petitioner filed a Motion to Reconsider asserting 14th Amendment protections against such a bar, Appendix F. The Presiding Justice issued an Order on July 9, 2009 denying Petitioner's Motion to Reconsider, Appendix C, unpublished. On August 19, 2010 the Supreme Court of New Hampshire issued an Opinion affirming the lower court's Order, --- A.2d ---, 2010 WL 3269773 (N.H. Aug. 19, 2010). A copy of that Opinion is attached hereto as Appendix A.

JURISDICTION

This matter comes to the Honorable United States Supreme Court for review pursuant to 28 U.S.C. Section 1257(a) as an appeal directly from an August 19, 2010 decision of the highest court in New Hampshire deciding an important question of federal

constitutional law in a way that conflicts with relevant decisions of this court. Although Petitioner does not believe the constitutionality of a state statute is at issue, as applied, a state statute may be in question. Notice was sent to the New Hampshire Attorney General pursuant to 28 U.S.C. 2403(b) and also pursuant to Supreme Court Rule 29.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Federal Constitutional Provisions

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. 14, Section 1.

B. State Statutory Provisions

The New Hampshire Judicial Branch has promulgated a standard form Parenting Plan which is regularly used by family law practitioners, marital masters and judges. It contains the following condition precedent for litigants who wish to make court filings, in the event of future custody ["parenting"] disputes:

> "In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the child(ren). If the parents are unable to work out the

> disagreement, they shall seek the help of a neutral third party to assist them. Only if the parents are unable to work out the disagreement after seeking third party assistance will they ask the court to decide the issue." See Appendix E, Page 52a, Paragraph (H) (1).

There is no statute mandating this process. There is no statute defining "neutral third party" process. There are no administrative rules describing what "neutral third party" process is. There is a Statute, NH RSA 461-A:7(III), which permits a trial court to order the parties to participate in "mediation." But, this same statute does not reference any form of pre-filing bar to judicial relief and further (when the statute is read in its entirety), seems to contemplate a post-filing order to mediation for parties already engaged in litigation.

STATEMENT OF THE CASE

Petitioner filed for divorce following her husband's adulterous affair with the parties birthing class instructor and a trial was held in April, 2009. Prior to trial, as is required under New Hampshire Family Court Rules, both parties submitted proposed final "Parenting Plans" (as such Custody Orders are known under New Hampshire Practice). A "Parenting Plan" would be known as a "Custody Order", in most jurisdictions. The words "custody" and "visitation" have been eliminated in New Hampshire. "Parenting time" is the new nomenclature for both "visitation" and "custody."

By statute, all Parenting Plans have to state a "method of resolving future disputes." NH RSA 461-

A:4(h). The Petitioner filed a proposed Parenting Plan with the Family Court asserting a right to access the courts, in all instances, under Part I Article 14 of the New Hampshire Constitution (New Hampshire's Due Process Clause). See Appendix E, Page 53a, Paragraph H(2).

Instead of adopting either party's proposed order, the Family Court created its own Parenting Plan and used standardized form language, as promulgated by the New Hampshire Administrative Office of the Courts, which conditionally bars both parties from instituting a subsequent proceeding. See Appendix B, Page 28a, Paragraph H(1). The form requires, as a pre-filing injunction, both sides to seek the assistance of a "neutral third-party" (as that phrase is used in the State of New Hampshire's standard form Parenting Plan NHJB-2064-FS) before either parent may file any future pleadings for disputes on matters involving their child.

Before any appeal is filed with the New Hampshire Supreme Court, New Hampshire practice requires the filing of a Motion to Reconsider, so that a trial court is given the opportunity to correct any mistakes and/or reversible errors. Hilario v. Reardon, 158 N.H. 56 (2008). The length of a Motion to Reconsider is limited by court rule to 10 pages. Petitioner's Motion to Reconsider referred to both New Hampshire's Due Process Clause (referenced above), as well as procedural and substantive Due Process guaranties, under the 14th Amendment of the Constitution of the United States of America. Petitioner's Motion to Reconsider, amongst other things, points out that there is no method for even choosing a "neutral third-party" much less any clearly defined process. See

Appendix F, Page 66a. There are no discovery procedures, deadlines, or specified process providing guidance to litigants.

The Trial Court denied the Motion to Reconsider and indicated certain limited exceptions that the trial judge might consider, even though said exceptions are not contained in the standard Parenting Plan language itself, nor any statute. See Appendix C. There is no specific statutory authorization requiring a New Hampshire Court to bar the filing of a claim without first seeking "neutral third-party assistance." NH RSA 461-A:7(III) does authorize a Court to order parties to participate in mediation. However, when read as a whole, this statute seems to only contemplate a post-filing order and not a pre-filing order. In another sub-section of NH RSA 461-A:7(IX), the mediator is required to file a report and return the parties to the court (in cases where mediation failed). In a pre-filing situation this would not be possible due to the fact that there would not even be a file on the Court's docket. The Court's file would be closed. In addition, another section of this Statute, NH RSA 461-A:7(IV), recognizes that mediation is not appropriate in all cases including, but not limited to, cases of domestic abuse. However, the pre-filing bar contained in the court's form order has no method for addressing this problem. A post-divorce incident of domestic violence would have no such safeguards. Therefore, as written, NH RSA 461-A:7 appears to be constitutional on its face. As applied to this case (and all others similarly situated), due to the form language promulgated by the New Hampshire Administrative Office of the Courts, the statute may violate the 14th Amendment guaranty of an opportunity to be heard. In addition, the New Hampshire Supreme Court has

opined (contrary to the lower Family Court's Order on reconsideration) that it "expects" parties to go through this undefined procedure, even in instances where both parties agree to appearing first before a trial court. In re Conner, 156 N.H. 250 at 251-252 (2007). No exceptions are articulated. Id. No discretion for the trial courts to waive the requirement is authorized. Id.

This case was appealed to the New Hampshire Supreme Court. On appeal, Petitioner's Brief before the New Hampshire Supreme Court argued that a pre-filing bar, denying all opportunity to be heard, was both a procedural and substantive Due Process violation. On a procedural basis, Petitioner pointed out that there are no rules, procedures (including a standard of review for modification) or, specified "neutral third-party" process. Petitioner's brief also argued substantively, that access to the Courts is ancillary to the underlying claim without which, Plaintiffs' cannot have suffered injury by being shut out of Court. Christopher v. Harbury, 536 U.S. 403 (2002). In this case, the ancillary claim involves the fundamental rights of Petitioner to have custodial time, custodial decision making, and other matters affecting her parent/child relationship. Petitioner asserted that her federally protected fundamental rights as a parent were also implicated in the appeal to the New Hampshire Supreme Court. Troxel v. Granville, 530 U.S. 57 (2000).

Petitioner's Brief further pointed out that parties were always free to mediate before, during and after a trial, and/or during the pendency of any appeal. Petitioner argued that the trial court's order enabled an opposing party to cause mischievous delays, if delay was of benefit to an opposing party. The Brief was

clear. This case is about a pre-filing bar to justice and not the potential benefits of non-judicial mediation. It is about the fundamental right to be heard. The bar to filing may inhibit the right to be heard in a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545 at 552 (1965).

Following oral argument, the New Hampshire Supreme Court rejected the Petitioner's Due Process claims. See Appendix A. In doing so, the New Hampshire Supreme Court relied on a 5th Circuit Court of Appeals Decision, Woods v. Holy Cross Hospital, 591 F.2d 1164, 1174 (5th Cir. 1979) which upheld a mandatory process of medical malpractice review boards, prior to the filing of suit.

Prior to filing this Petition for a Writ of Certiorari, with this Honorable Court, the Petitioner filed a Motion to Reconsider with the New Hampshire Supreme Court pointing out that the authority from the 5th Circuit, (cited above), contained a clearly defined process and that the Petitioner's custody order lacked any procedure, making the case distinguishable. Petitioner further pointed out, in the Motion to Reconsider, that when there is no defined procedure, the remaining question is, "what process is due?" Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). See Appendix G.

In response, the New Hampshire Supreme Court denied, without explanation, the Motion to Reconsider. See Appendix D.

This case presents this Honorable Court with the opportunity to address the substantive and procedural Due Process issues affecting not only the Petitioner,

but all similarly situated parents who may be barred from an initial opportunity to be heard, when seeking any modification of a child custody order.

REASONS FOR GRANTING THE WRIT

I. THE STATE OF NEW HAMPSHIRE, ADMINISTRATIVE OFFICE OF THE COURTS, HAS CREATED A FORM BARRING ALL FUTURE COURT ACCESS WITHOUT A LITIGANT FIRST PARTICIPATING IN A NON-JUDICIAL PROCESS WHICH IS NOT DEFINED, OR MANDATED BY ANY STATUTE, AND WHICH FAILS TO SPECIFY, IN ANY WAY, WHAT PROCESS IS DUE?

In October of 2005 the Legislature of the State of New Hampshire enacted a dramatic and unprecedented statute in connection with all laws affecting child custody between disputing parents. In fact, the use of the word "custody" was deleted in cases of divorce and replaced this concept with phrases such as: "parental rights and responsibilities"; and "parenting schedules"; and "residential responsibility." NH RSA 461-A:1. As indicated above, "parenting time" has become the new nomenclature for the words "custody" and "visitation."

NH RSA 461-A:1 also changed orders, formerly known as custody orders, and renamed them "Parenting Plans." The New Hampshire Legislature further specified that certain issues had to be addressed within the context of each Parenting Plan issued as a court order or, approved stipulation. NH RSA 461-A:4. One of the issues to be included in each Parenting Plan was a "Method for Resolving Disputes."

RSA 461-A:4(h). However, the legislation was completely silent as to what a "method" was.

Concurrent with the promulgation of the new law mandating Parenting Plans, the State of New Hampshire also passed a statute enacting a statutory scheme for the training, certification, and discipline of marital mediators, NH RSA Chapter 328-C. This statute was passed with the expectation that mediators could assist litigating parties in achieving a settlement, outside of trial. NH RSA 328-C:1. Chapter 328-C is limited to the training, certification, and discipline of mediators, for use in disputes of parental rights. NH RSA 329-C:8. There is no statutorily defined "mediation" process. There are no Administrative Rules outlining a mediation process for parties to follow. The Administrative Rules only spell out a process for certifying, training and/or disciplining mediators. The Administrative Rules are silent as to the process of mediation itself. The process of mediation is largely within the exclusive control of any particular mediator. How mediation may occur differs arbitrarily from mediator to mediator.

In response to the new statutes, referenced above, the New Hampshire Administrative Office of the Family Courts compiled and promulgated a form which could be used in all cases involving disputes over parental rights and responsibilities. The form complies with the legislatively mandated issues which the State of New Hampshire requires to be addressed in all Parenting Plans, including a "method for resolving disputes." NH RSA 461-A:4(h). The form was placed on the internet (in PDF format), for use by any and all litigants including, those represented by counsel and those not represented by counsel. The

Parenting Plan form promulgated by the Administrative Office of the Courts, is not required to be used. However, (more often than not), the form is used by courts, attorneys, and pro se parties. Almost all Parenting Plans which issue by stipulation or, court order, utilize this form.

The Parenting Plan promulgated by the New Hampshire Administrative Office of the Courts (NHJB-2064-FS), to comply with NH RSA 461-A:4(h), contains a methodology for resolving disputes. In the final paragraph of the Parenting Plan, the form provides two (2) options and states:

"**H. Method(s) for Resolving Disputes: (Choose one)**

> [ ] 1. In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the child(ren). If the parties are unable to work out the disagreement, they shall seek the help of a neutral third party to assist them. Only if the parents are unable to work out the disagreement after seeking third party assistance will they ask the court to decide the issue.
>
> [ ] 2. Other: _____"

The above quoted language of the form promulgated by the Administrative Office of the Courts essentially leaves one defined option. With the check of a box, a Judge hearing a custody case, can prospectively bar the parents from returning to Court on custodial issues. The defined option requires

parties to engage in an undefined initial process called "neutral third party" assistance. There is no such process referenced anywhere except the Form Parenting Plan (NHJB-2064-FS) and it is probably intended to be mediation (as described above). But, if the parties agree to bypass the mandatory "neutral third party" process and stipulate to proceed directly with the filing of a petition, the New Hampshire Supreme Court has ruled that it expects parties to participate in this undefined process, first. "In future cases we expect parties to comply with such provisions in Parenting Plans". [Even when neither the parties nor the lower court thought the provision required dismissal of the action]. In re Conner, 156 N.H. 250 at 251-252 (2007). No exceptions have been articulated Id. No discretion for the trial court to waive this requirement is given. Id. Essentially, the form promulgated by the Administrative Office of the Courts leaves no option other than the mandatory neutral third party process, described above.

Appellant had asserted a Due Process right under its Proposed Parenting Plan Order, prior to the trial (as described above). See Appendix E, Page 53a, Paragraph H(2). However, the Trial Court disregarded this assertion and arbitrarily checked off the box mandating "neutral third party assistance." See Appendix B, Page 28a, Paragraph H(1).

This case presents an issue, within the general administration of justice for all parents with check the box, form custody orders in the State of New Hampshire. With the use of the form language promulgated by the New Hampshire Administrative Office of the Courts, all parents who want to return to Court in a post-divorce custody dispute will have their

Due Process rights violated. The mandatory language established by the pre-filing order has no method for choosing a mediator. Further, there are no methods of discovery, no specified time table, (within which mediation must occur), and the "best interest" standard in the Parenting Plan which is at odds with the different standard which applies for modification of the same. [NH RSA 461-A:11, In re Muchmore, 159 N.H. 470 (2009)]. All of the above occurs in the absence of any statute, or rule, specifying substantive and procedural use of private "mediation" or private, "neutral third party assistance." Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1998); American Manufacturers Mutual Insurance v. Sullivan, 526 U.S. 40 (1999). The only guidance, apparently, may be mediation "good faith." NH RSA 461-A:7 (IX). Arbitrary and conflicting enforcement of this undefined bar to judicial access leaves the question of, what process is due? Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). As the neutral third party process is a compulsory restriction, which bars access to the Courts, significant procedural due process issues arise by the lack of any definition. Lewis v. Casey, 518 U.S. 343 at 351 (1996); U.S. v. Local 6A, 832 F.Supp. 674 (S.D. N.Y. 1993) New Hampshire's "neutral evaluation" procedure, which bars an opportunity to be heard, violates procedural Due Process guarantees Richards v. Jefferson County, 517 U.S. 793 (1996).

II. THE FORM CREATED BY THE NEW HAMPSHIRE ADMINISTRATIVE OFFICE OF THE COURTS WHICH PROSPECTIVELY BARS FUTURE COURT FILINGS, UNLESS A PARENT FIRST PARTICIPATES IN A NON-JUDICIAL PROCESS, VIOLATES THE SUBSTANTIVE DUE PROCESS RIGHTS OF PARENTS, IN THE CARE, CUSTODY, MANAGEMENT AND COMPANIONSHIP OF THEIR CHILDREN AND ACCESS TO THE COURTS, AS PROTECTED BY THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

"The liberty interest at issue. . .the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court. . . . [I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Troxel v. Granville, 530 U.S. 57, 65-66 (2000). Parental rights are constitutionally protected such as a parent's "right to the care, custody, management and companionship of [his or her] minor children" which is an interest "far more precious than. . . property rights." May v. Anderson, 345 U.S. 528, 533 (1952). Griswold v. Connecticut, 381 U.S. 479, 502 (1965). Any law impinging on an individual's fundamental rights is subject to strict scrutiny. San Antonio School District v. Rodriguez, 411 U.S. 1 (1973). Further, the right of access to courts is a basic constitutional guarantee, the infringement of which is subject to heightened judicial scrutiny. Tennessee v. Lane, 541 U.S. 509, 510 (2004). "In order to withstand strict scrutiny, the law must

advance a compelling state interest by the least restrictive means available." Bernal v. Fainter, 467 U.S. 216 (1984). New Hampshire has not advanced any compelling reason to delay the Petitioner's access to court, should she so desire and future disputes arise, regarding her child. Therefore, the forward-looking order requiring that Petitioner seek neutral third party assistance fails the strict scrutiny test and is unconstitutional. The New Hampshire Supreme Court, sua sponte, likened this issue to requiring that a medical malpractice matter be reviewed by a panel before suit can be filed, citing Woods v. Holy Cross Hospital, 591 F.2d 1164, 1174 n.16 (5th Cir. 1979). However, the right to sue for injuries caused by medical malpractice is not a fundamental constitutional right and was decided on the rational basis test. Id.

CONCLUSION

As Petitioner (and others like her) has been initially barred from future access to the Courts in all instances involving a future custody dispute, this Honorable Court should accept this appeal and provide her with her fundamental right to an opportunity to be heard. No system of justice should restrict citizens to undefined non-judicial process in combination with a pre-filing bar to access to judicial review, absent the most egregious circumstances such as harassment or, bad faith. No such circumstances are present here. The 14th Amendment requires an initial opportunity to be heard. Petitioner prays that this Honorable Court will grant this Petition.

Respectfully Submitted

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APPENDIX

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APPENDIX A

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by E-mail at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: http://www.courts.state.nh.us/supreme.

THE SUPREME COURT OF NEW HAMPSHIRE

Concord Family Division

No. 2009-556

[Filed August 19, 2010]

IN THE MATTER OF PATRICIA MARTIN AND MICHAEL MARTIN

Argued: June 10, 2010
Opinion Issued: August 19, 2010

Daniel C. Proctor, of Concord, by brief and orally, for the petitioner.

Puckhaber Law Offices, PLLC, of Concord (Diane M. Puckhaber on the brief and orally), for the respondent.

DALIANIS, J. The petitioner, Patricia Martin (mother), appeals an order of the Concord Family Division (Gordon, J.) approving the final decree of divorce from the respondent, Michael Martin (father), recommended by the Marital Master (Rein, M.). The mother also appeals an order of the Family Division (Carbon, J.) approving the marital master's denial of her motion to reconsider. We affirm.

The record supports the following relevant facts. The parties met in 2002 and were married in 2004. They are the parents of a son, who was born in June 2007. Shortly after their son was born, the mother discovered that the father had been having an affair.

The mother filed for divorce in September 2007. As part of the divorce proceedings, the mother sought permission to relocate with the son to Rhode Island where her parents live. The family division denied her request, stating in the parenting plan attached to the final decree that the mother "is not permitted to remove [the son]'s residence from the State of New Hampshire and to a location farther away from [the father]'s residence than is her current residence in Derry." The parenting plan established a rotating parenting schedule to coincide with the father's rotating work schedule. In addition, it included a provision regarding future parenting disagreements, stating:

> In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the child(ren). If the parents are unable to work out the disagreement, they shall seek the help of a neutral third party to assist them. Only if the parents are unable to work out the disagreement after seeking third party assistance will they ask the court to decide the issue.

The mother moved for reconsideration of rulings in the final decree relevant to relocation, the parenting schedule and the future disagreements provision, which the family division denied. On appeal, the mother argues that the trial court erred by: (1) denying her request to relocate; (2) instituting the rotating parenting schedule; and (3) mandating neutral third party assistance before instituting further legal proceedings with respect to future parenting disagreements. At oral argument, the mother conceded that the rotating parenting schedule issue is now moot because the father's work schedule has changed. Accordingly, we address only the mother's arguments concerning relocation and the future parenting disagreements provision.

I. Relocation

The mother argues that the trial court erred by denying her request for permission to relocate because it incorrectly interpreted and applied RSA 461-A:12 (Supp. 2009), the statute that the parties agree governs this issue. RSA 461-A:12, V provides, in relevant part that:

> The parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that:
>
> (a) The relocation is for a legitimate purpose; and
>
> (b) The proposed location is reasonable in light of that purpose.

The statute further provides that "[i]f the burden of proof established in paragraph V is met, the burden shifts to the other parent to prove, by a preponderance of the evidence, that the proposed relocation is not in the best interest of the child." RSA 461-A:12, VI.

When determining matters of child custody, a trial court's overriding concern is the best interest of the child. In the Matter of Mannion & Mannion, 155 N.H. 52, 55 (2007). In doing so, the trial court has wide discretion, and we will not overturn its determination unless there has been an unsustainable exercise of discretion. Id. This means that we review the record only to determine whether it contains an objective basis to sustain the trial court's discretionary judgment. Id. The trial court's determination in any custody case depends to a large extent upon the firsthand assessment of the credibility of witnesses, as well as the character and temperament of the parents, and the findings of the trial court are binding upon this court if supported by the evidence. Id.

Resolving the issue in this appeal, however, also requires that we interpret RSA 461-A:12. We review a trial court's statutory interpretation de novo. See In the Matter of Choy & Choy, 154 N.H. 707, 711 (2007). In matters of statutory interpretation, we are the final arbiters of the legislative intent as expressed in the

words of the statute considered as a whole. In the Matter of Carr & Edmunds, 156 N.H. 498, 503-04 (2007). We begin our analysis by looking to the language of the statute itself. In the Matter of LaRue & Bedard, 156 N.H. 378, 380 (2007). In examining the language of the statute, we ascribe the plain and ordinary meaning to the words used. In the Matter of Carr & Edmonds, 156 N.H. at 504. We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. If the language is plain and unambiguous, then we need not look beyond it for further indication of legislative intent. In the Matter of LaRue & Bedard, 156 N.H. at 380. We interpret a statute in the context of the overall statutory scheme and not in isolation. In the Matter of Carr & Edmunds, 156 N.H. at 504.

Pursuant to its plain meaning, RSA 461-A:12, V requires that in this case, the mother must demonstrate, by a preponderance of the evidence, that her request to relocate is for a legitimate purpose and that the proposed location, Rhode Island, is reasonable in light of that purpose. Neither party argues that the statute is ambiguous. We, therefore, need not look beyond it for further indication of legislative intent. In the Matter of LaRue & Bedard, 156 N.H. at 380.

The trial court found that the "primary reason [the mother] wants to move is to avoid ongoing interaction with the father" and to "get away from [him]." It also found that there was "no evidence that [the father] is any threat to [the mother], or that he has conducted himself in a way as to cause her to fear [for] her safety." These findings are supported by evidence, including the mother's own testimony and the report

of the guardian ad litem, and are, accordingly, binding upon us. In the Matter of Mannion & Mannion, 155 N.H. at 55.

The mother argues that the statutory term "legitimate" means only that she must set forth a subjectively legitimate reason for wanting to relocate, and that the court must then consider whether Rhode Island is an objectively reasonable location. She contends that her needs for emotional and financial support from her Rhode Island family constitute subjectively legitimate reasons under the statute. Assuming, without deciding, that the mother's interpretation of "legitimate" is correct, her argument still fails.

While the mother testified that she sought to relocate to receive financial and emotional support from her family, the trial court found that the relocation would not result in an improvement to her financial status. Specifically, it noted that she currently has full time employment in New Hampshire but no comparable job prospects in Rhode Island. With respect to emotional support, the mother's counseling records, submitted in the appendix to her brief, indicate that she has not had a strong relationship with her parents in the past.

As noted above, the trial court found that the primary reason she wants to move is to avoid ongoing interaction with the father and to get away from him. The mother does not argue that the trial court erred as a matter of law in concluding that wanting to "get away" is not a legitimate reason. Thus, even if we accept the mother's definition of "legitimate" as a subjective determination, upon the facts of this case,

she cannot prevail, and we need not further address her argument.

In light of the trial court's findings, we agree with its legal conclusion that the mother failed to carry her burden of demonstrating that she seeks relocation for a legitimate purpose. Therefore, we need not consider whether Rhode Island is a reasonable location, see RSA 461-A:12, V(b), nor need we consider whether the father has proved, by a preponderance of the evidence, that relocating to Rhode Island is not in the son's best interest, see RSA 461-A:12, VI.

II. Future Parenting Disagreements

The mother argues that the parenting plan provision stating that the parents "shall seek the help of a neutral third party" before petitioning the court in the event of future disagreements about parenting issues violates her constitutional rights to due process and access to the courts. See N.H. CONST. pt. I, art. 14; U.S. CONST. amend. XIV. She contends that the compulsory word "shall" bars the parties from accessing the courts and restricts her rights to seek judicial relief for her grievances. She further argues that due process requires that she "be provided with the opportunity of an initial hearing and access to the courts, before being sent to a 'third party process.'" We first address her claims under the State Constitution, and cite federal opinions for guidance only. State v. Ball, 124 N.H. 226, 231-33 (1983).

Due process under Part I, Article 14 "provides that all citizens have a right to the redress of their actionable injuries." Gould v. Concord Hospital, 126 N.H. 405, 409 (1985). "The article does not prohibit all

impairments of the right of access to the courts." Estate of Cargill v. City of Rochester, 119 N.H. 661, 665 (1979), appeal dismissed, 445 U.S. 921 (1980). "Reasonable regulations regarding the commencement of suits do not automatically violate the constitutional guaranty that justice will be administered promptly." Opinion of the Justices (Limitation of Civil Actions), 137 N.H. 260, 269 (1993).

We cannot accept the mother's contention that the provision at issue bars judicial relief for future parenting disagreements. The provision at issue neither infringes upon nor denies that right. It imposes no specific requirement that the assistance of a neutral third party must be of any particular nature or duration or even that the third party must have actually provided assistance. It permits either party to seek judicial relief, as long as that party demonstrates that the parents first sought the assistance of a neutral third party. Thus, the mother's concern that one parent could use this provision to cause undue delay is not supported by its plain meaning. Cf. Opinion of the Justices, 137 N.H. at 269 ("[W]e do not rule out the possibility that the lapse of time inherent in extended litigation could rise to a constitutional violation in a given case."). Similarly, because we conclude that the provision has no deleterious effect upon the mother's access to judicial relief, we need not address her argument that it implicates "her fundamental rights as a parent."

The Federal Constitution offers the mother no greater protection than the State Constitution with regard to her claims of error. See id.; Woods v. Holy Cross Hospital, 591 F.2d 1164, 1174 n.16 (5th Cir. 1979) (noting that a Florida statute permitting access

to courts only after mediation of a medical malpractice claim is not a denial of court access). Accordingly, we reach the same result under the Federal Constitution.

Affirmed.

BRODERICK, C.J., and DUGGAN, HICKS and CONBOY, JJ., concurred.

APPENDIX B

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

Concord Family Division	Telephone: (603) 271-0630
	TTY/TDD Relay
32 Clinton Street	(800) 735-2964
Concord NH 03302	http://www.courts.state.nh.us

NOTICE OF DECISION

DANIEL C. PROCTOR, ESQ
ATTORNEY AT LAW
8 PERLEY STREET
PO BOX 3544
CONCORD NH 03302-3544

Case Name: **In the Matter of Patricia Martin and Michael Martin**

Case Number: **629-2007-DM-00105**

Enclosed please find a copy of the Court's Order dated May 26, 2009 relative to:

Parenting Plan - See Attached

May 27, 2009 LoriAnne Dionne, Clerk
(169)

c: Diane M. Puckhaber, ESQ; Steven Michael Latici, ESQ; Division of Human Services; Alan I. Cantor

NJBF-2207-DF (3/6/2007)

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Concord Family Division

Case Name: In the Matter of Patricia Martin and Michael Martin

Case Number: 629-2007-DM-105
(if known)

PARENTING PLAN

This parenting plan is: **(Choose one)**

☐ Agreed upon ☐ Proposed by _____
(Parent's name)

☒Developed by Court

This parenting plan is: **(Choose one)**

☐ Temporary. The completed paragraphs apply until the case is concluded. If you are requesting a temporary order on parenting issues, you should include as many of these parenting plan topics as you will need to carry your family through until all parenting issues are resolved.

☒ Final. All completed paragraphs shall be incorporated in the Court's final order.

☐ Changing a prior final parenting plan or a prior final custody/visitation order.

The parental rights and responsibilities statute, RSA 461-A, requires any party in a divorce, legal separation, or parenting (formerly known as "custody") case to file a parenting plan, whether s/he is seeking an order establishing parental rights and responsibilities or an order modifying such rights and responsibilities. As you complete the Parenting Plan, please bear in mind this state's policy (below) as set forth in RSA 461-A:2. This policy will guide the court in making decisions affecting your parental rights and responsibilities.

Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:

(a) Support frequent and continuing contact between each child and both parents.

(b) Encourage parents to share in the rights and, responsibilities of raising their children after the parents have separated or divorced.

(c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, or child abuse/neglect.

(d) Grant parents and courts the widest discretion in developing a parenting plan.

(e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

This parenting plan is for the following child(ren):

	Full Name	Date of Birth
1.	Holden Davis Martin	06/21/2007
2.		
3.		
4.		
5.		
6.		

A. Decision-Making Responsibility:

1. Major Decisions: These include, but are not limited to, decisions about the child(ren)'s education, non-emergency health and dental care, and religious training: **(Choose one)**

   ☒ (a) Joint Decision-Making: Both parents shall share in the responsibility for making major decisions about the child(ren).

   ☐ (b) Sole Decision-Making: _____ (parent's name) shall have sole decision-making authority on major decisions about the child(ren).

2. Day-To-Day Decisions: Each parent shall make day-to-day decisions for the child(ren) during

the time he/she is caring for the child(ren). This includes any emergency decisions affecting the health or safety of the child(ren). A parent who makes an emergency decision shall share the decision with the other parent as soon as reasonably possible.

3. Other provisions: _____

B. Residential Responsibility & Parenting Schedule:

1. Routine schedule: **(Choose one)**

☐ (a) The child(ren) shall reside solely with _____ (parent's name).

☒ (b) The child(ren) shall reside primarily with Patricia Martin (parent's name), except for the following days and times when the other parent shall have parenting time with the child(ren): i. Shift #1 (Tuesday - Friday 6:00 am until 4:00 pm) Michael Martin shall have Holden every other week from Saturday at 9:00 am until Monday morning and, on the alternate week, from Sunday at 5:30 pm until Tuesday morning; ii. Shift #2 (Saturday, Sunday, and Monday 6:00 am until 4:00 pm: Tuesday 4:00 pm until 2:00 am;) Michael Martin shall have Holden every other week from Wednesday at 5:30 until Friday morning and, on the alternate week, from Thursday at 5:30 pm until Saturday at 9:00 am; iii. Shift #3 (Sunday - Thursday 10:00 pm to 6:00 am) Michael Martin shall have Holden every other week

from Friday at 5:30 pm until Sunday at 5:30 pm and, on the alternate week, from Saturday at 5:30 pm until Monday morning; iv. Shift #4 (Wednesday, Thursday 4:00 pm to 2:00 am; Thursday, Friday 8:00 pm to 6:00 am) Michael Martin shall have Holden every other week from Saturday at 5:30 pm until Monday morning and, on the alternate week, from Monday at 5:30 until Wednesday morning; v. Shift #5 (Friday, Saturday 5:00 pm to 3:00 am; Sunday, Monday 2:00 pm until midnight) Michael Martin shall have Holden every other Tuesday at 5:30 until Thursday morning and, on alternate weeks, from Sunday at 9:00 am until Tuesday morning: vi. Should Michael Martin succeed in obtaining a job with a Monday -Friday, regular schedule, he shall have Holden on alternate weeks from Friday at 5:30 until Monday morning and, on alternate weeks, from Wednesday at 5:30 until Friday morning: vii. Michael Martin may remove Holden from day care one day a week, when his schedule allows, but not so that he misses any instructional period, not for more than three hours, and as long as he returns Holden to day care at least 30 minutes before he is normally picked up by his mother, unless it is Michael Martin's evening to have Holden, in which case, he shall be entitled to pick Holden up once a week three weeks early and keep him to coincide with his regular time.

☐ (c) The above choices do not fit this parenting situation. Instead, the parents shall have equal or approximately equal residential responsibility for the minor child(ren) as follows:

_____

2. Holiday and Birthday Planning: **(Choose (a), (b), or (c))**

☐ (a) No holiday and birthday schedule shall apply. The routine schedule set forth above shall apply.

☐ (b) Holiday and birthday parenting time shall be as the parties agree.

☒ (c) The holidays and birthday(s) listed below should be shared as described. Specify start and end times and days/dates as necessary. (For example, Thanksgiving: Mother—even years, Father—odd years, starting on the Wednesday prior to Thanksgiving at 6pm, ending the Friday after Thanksgiving at 6pm). Parenting time on holidays and birthdays which are not checked and described shall be according to the routine schedule set forth above.

☒ Mother's Day with mother every year from 9:00 am until Monday morning.

☒ Father's Day with father every year from 9:00 am until Monday morning.

☐ July 4th _____

☒ Thanksgiving with mother in odd years from the day before Thanksgiving at 3:00 pm until Sunday at noon; with father in even years.

☒ Christmas Eve with mother in even years from noon until Christmas day at 5:30 pm; with ~~father in even years.~~

☒ Christmas Day with mother in odd years from 5:30 pm until December 26 at 5:30 pm; with father in even years.

☐ Child(ren)'s Birthday(s) _____

☐ Mother's Birthday _____

☐ Father's Birthday _____

☒ Other religious, civil and family celebrated special occasions: The above listed special days shall supercede the regular schedule; other special days shall be superceded by the regular schedule.

3. Three-day weekends: **(Choose (a), (b), or (c))**

☒ (a) No three-day weekend schedule shall apply. The routine schedule set forth above shall apply.

☐ (b) The parent exercising parenting time on the weekend before a Monday holiday shall

have parenting time on that Monday holiday.

☐ (c) The three-day weekends listed below should be shared as listed and described. Parenting time on three-day weekends which are not checked and described shall be according to the routine schedule set forth above.

☐ M. L. King Jr. Civil Rights Day _____

☐ Presidents' Day _____

☐ Memorial Day _____

☐ Labor Day _____

☐ Columbus Day _____

☐ Other _____

4. Vacation Schedule:

(a) December Vacation: **(Choose one)**

☒ (1) No December vacation schedule shall apply. The routine schedule set forth above shall apply.

☐ (2) The parent exercising parenting time with the child(ren) on Christmas Eve (as outlined above) shall have the following additional parenting time with the

child(ren) over the December vacation:

_____

The parent exercising parenting time with the child(ren) on Christmas Day (as outlined above) shall have the following additional parenting time with the child(ren) over December vacation: _____

☐ (3) The above choices do not fit this parenting situation. Instead, the residential schedule for the child(ren)'s December vacation shall be as follows:

_____

(b) February, April, and Summer Vacations. Specify the day of the week vacation starts and ends, if necessary. **(Choose one)**

☐ (1) No February, April, or summer vacation schedule shall apply. The routine schedule set forth above shall apply.

☐ (2) The child(ren) shall reside with _____ (parent's name) during February vacation, except for the following days and times when the child(ren) shall be with the other parent: _____

The child(ren) shall reside with _____ (parent's name) during April vacation, except for the following days and times when the child(ren) shall be with the other parent: _____

The child(ren)'s summer residential schedule shall be as follows: _____

☒ (3) The above choices do not fit this parenting situation. Instead, the residential schedule for the child(ren)'s February, April, and summer vacations shall be as follows: Each party shall be entitled to two uninterrupted, non-consecutive 7 day periods each year. Each party shall notify the other at least 60 days in advance. In the event of a dispute, Patricia Martin's choice shall prevail in even years and Michael Martin's in odd years.

(c) Other Vacations--describe the schedules for any other vacations: _____

5. Supervised Parenting Time: **(Choose one)**

☒ (a) Not applicable.

☐ (b) The residential schedule is subject to the restrictions or limitations set out as follows:

_____

6. Other Parental Responsibilities:

Each parent shall promote a healthy, beneficial relationship between the child(ren) and the other parent and shall not demean or speak out negatively in any

manner that would damage the relationship between either parent and the child(ren).

Neither parent shall permit the child(ren) to be subjected to persons abusing alcohol or using illegal drugs. This includes the abuse of alcohol or the use of illegal drugs by the parent.

The parties agree to, or the court establishes, the following additional expectations: **(Choose all that apply)**

☒ (a) A parent requesting a temporary change to the parenting schedule shall act in good faith and ask the other parent about such change as soon as possible. The parents are expected to fairly adjust parenting schedules when family situations, illnesses, or other commitments make modification reasonable.

☐ (b) If a parent requires child care by some person who does not reside in his or her residence, for a period reasonably expected to last longer than _____ hours, then the other parent shall be offered the opportunity to parent the child. This section does not apply to regularly scheduled day care.

☐ (c) Each parent shall supply the appropriate child(ren)'s clothing for them for their scheduled time with the other parent. These clothes are to be

considered the child(ren)'s clothes and shall be returned with the child(ren).

☒ (d) Each parent shall be responsible for ensuring that the child(ren) attend regularly scheduled activities, including but not limited to sports and extra-curricular activities, while the child(ren) are with that parent.

☒ (e) As the child(ren) get older, their individual interests may impact the parenting schedule set forth in this parenting plan. Each parent shall be flexible in making reasonable adjustments to the parenting schedule as the needs and interests of their maturing children require.

☐ (f) Other Parenting Responsibilities: ___

C. Legal Residence of a Child for School Attendance: (Choose One)

☒ 1. The children shall attend school in the school district where the parent with sole or primary residential responsibility resides. Under this plan, that parent is Patricia Martin.

☐ 2. This parenting plan is for equal or approximately equal periods of residential responsibility, and so the child(ren)'s legal residence for school purposes shall be with _____ (parent's name).

D. Transportation and Exchange of the Child(ren): (Choose all that apply)

☒ 1. Transportation arrangements for the child(ren) between parents shall be as follows: Michael Martin shall pick up Holden to start his parenting time and Patricia Martin shall pick up Holden to start her parenting time. In many cases, the exchange shall be at school or day care; otherwise, the exchange shall be at the home of the other parent.

☐ 2. Unless both parents agree upon a different meeting place, the exchange of the child(ren) shall be at: _____

☐ 3. Transportation costs shall be shared as follows: _____

☐ 4. Other _____

E. Information Sharing and Access, Including Telephone and Electronic Access:

Unless there is a court order stating otherwise:

Both parents have equal rights to inspect and receive the child(ren)'s school records, and both parents are encouraged to consult with school staff concerning the child(ren)'s welfare and education. Both parents are encouraged to participate in and attend the child(ren)'s school events.

Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the child(ren).

Both parents have equal rights to consult with any person who may provide care or treatment for the child(ren) and to inspect and receive the child(ren)'s medical, dental or psychological records, subject to other statutory restrictions.

Each parent has a continuing responsibility to provide a residential, mailing, or contact address and contact telephone number to the other parent.

Each parent has a continuing responsibility to notify the other parent of any emergency circumstances or substantial changes or decisions affecting the child(ren), including the child(ren)'s medical needs, as close in time to the emergency circumstance as possible.

1. Parent-Child Telephone Contact: **(Choose one)**

The children shall be given privacy during their conversations with either parent. While the child(ren) reside with one parent, the other parent shall be permitted to speak by telephone with the child(ren):

☒ (a) At reasonable times.

☐ (b) At the following times only: _____

☐ (c) Other: _____

2. Parent-Child Written Communication: **(Choose one)**

☒ (a) Both parents and child(ren) shall have the right to communicate in writing or by e-mailing during reasonable hours without interference or monitoring by the other parent.

☐ (b) Specific agreements/orders regarding written or e-mail access between child(ren) and parent(s): _____

F. Relocation of a Residence of a Child: (Choose one)

☒ 1. The relocation of a child's residence in which s/he lives at least 150 days per year is governed by RSA 461-A:12. In general, either parent may move the child's residence if it results in the parents living closer and it if will not affect the child's school enrollment. Prior to relocating the child's residence farther from the other parent or in such a way that school enrollment will be impacted, the parent shall provide reasonable notice to the other parent. For purposes of this section, 60 days notice shall be presumed to be reasonable unless other factors are found to be present. At the request of either parent, the court shall hold a hearing on the relocation issue.

☐ 2. This parenting plan shall expressly govern the relocation issue as follows: **(Choose one)**

☒ (a) In addition to the provisions of RSA 461-A:12, this plan shall include the following relocation details: Patricia Martin is not permitted to remove Holden's residence from the State of New Hampshire and to a location farther away from Michael Martin's residence than is her current residence in Derry, NH.

☐ (b) Instead of RSA 461-A:12, this plan shall include the following relocation details: _____

G. Procedure for Review and Adjustment of Parenting Plan: (Choose one)

☒ 1. The parents shall meet as set out below to review this parenting plan and the well-being of the child(ren). Any agreed-on changes shall be written down, signed by both and filed with the court. (Each should keep a copy.) **Choose (a), (b), (c), or (d).**

☐ (a) Meetings shall be in _____ (month).

☒ (b) Meetings shall be yearly.

☐ (c) Meetings shall be every 2 years.

☐ (d) Meetings shall not be on a set schedule but shall be as often as necessary for the benefit of the child(ren).

☒ 2. Other: The parties shall meet during the summer before Holden is to start first grade to determine whether Michale Martin's

schedule (if it is still a rotating one) is working for Holden's school schedule. If they cannot agree, they must seek assistance from a professional mediator.

H. Method(s) for Resolving Disputes: (Choose one)

☒ 1. In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the child(ren). If the parents are unable to work out the disagreement, they shall seek the help of a neutral third party to assist them. Only if the parents are unable to work out the disagreement after seeking third party assistance will they ask the court to decide the issue.

☐ 2. Other: _____

I. Other parenting agreements important to the parents or child(ren) are listed below or are set forth in the _____ number of attached pages.

The parties may modify the provisions of this Parenting Plan by agreement.

Recommended by:

/s/ Deborah Rein _____ 5/25/09
Signature of Marital Master Date

DEBORAH KANE REIN
MARITAL MASTER
Name of Marital Master

So ordered:

/s/ Edward M. Gordon — 5/26/09

Signature of Judge — Date

Edward M. Gordon

Name of Judge

(NHJB 2064-FS (10/28/2005)

APPENDIX C

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

Concord Family Division
32 Clinton Street
Concord NH 03302

Telephone: (603) 271-0630
TTY/TDD Relay
(800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

DANIEL C. PROCTOR, ESQ
ATTORNEY AT LAW
8 PERLEY STREET
PO BOX 3544
CONCORD NH 03302-3544

Case Name: **In the Matter of Patricia Martin and Michael Martin**

Case Number: **629-2007-DM-00105**

Enclosed please find a copy of the Court's Order dated July 09, 2009 relative to:

Order - See Attached

This matter will become final on 08/10/2009 known as the Judgment Day, if no appeals are file. Appeals to

the Supreme Court must be filed within 30 days.of the date of the Notice of Decision.

July 10, 2009 LoriAnne Dionne, Clerk
(169)
c: Diane M. Puckhaber, ESQ; Steven Michael Latici, ESQ; Division of Human Services; Alan I. Cantor

NJBF-2207-DF (3/6/2007)

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

CONCORD FAMILY DIVISION

Case No. 629-2007-DM-105

[Filed July 9, 2009]

In the Matter of:	)
	)
Patricia Martin and Michael Martin	)
	)

ORDER

1. MOTION FOR RECONSIDERATION AND/OR CLARIFICATION (# 118)

   A. Uniform Support Order

   The amount of child support in Paragraph 4 of the Uniform Support Order should be $747 per month, and the May 26, 2009 Uniform Support Order is so amended. See amended Uniform Support Order.

   B. Final Decree

   Motion for Reconsideration is denied regarding the allocation of debt. In the Final Decree I explained why I allocated the debt obligations as I did.

   C. Parenting Plan

   See below.

2. PETITIONER'S MOTION TO RECONSIDER (#120)

A. Relocation

The Court stands on the findings and rulings made in the Final Decree on the relocation issue. I disagree with counsel's legal position. I made a decision based on the best interest of the child. Motion to reconsider this issue is denied.

B. Parenting Schedule

See below.

C. Mediation

Motion to reconsider the provisions of Paragraphs G and H is denied. I believe that it is in the best interest of Holden for the parties to attend mediation or co-parent counseling or any other non-adversarial process when they have issues regarding their parenting of Holden. That is the purpose of Paragraphs G and H. I do not see either of these provisions prohibiting a party from requesting relief from the Court. I am asking them, on behalf of their son, to make an effort to try to resolve their issues in an amicable way. If they cannot (and counsel is correct that there is no requirement for any duration of mediation - I would merely expect that they make a good faith effort in mediation), then the Court process is available to them. Likewise, in the event of an emergency or some other time sensitive or dire circumstance, either party may petition the Court for relief. In addition, nothing prohibits either party from filing a petition with the Court without having

attended mediation if they can express good cause why the mediation/co-parenting counseling provision is unsafe, futile, or rejected for some legitimate reason.

3. PARENTING PLAN

Making a decision about a Parenting Plan in this case was very difficult. On the one hand, it is always preferable to have a stable and consistent schedule rather than a piecemeal schedule as I created here. On the other hand, Michael Martin is a police officer with an unusual schedule and it seems unreasonable to allocate parenting time to him that he is unable to utilize. From reviewing her proposed parenting plan, I thought I incorporated Patricia Martin's proposals in the final Parenting Plan. It seemed to me that, if this was a schedule that was acceptable to her and it accounted for Mr. Martin's varied schedule, then it would be acceptable to me. Apparently, Patricia Martin is no longer interested in the schedule as it is and the schedule as she proposed. I understand that her proposal for the schedule was only until Holden began school (he is two years old right now), and I provided (in Paragraph G 2) for the parties to discuss the appropriateness of the schedule before Holden started first grade. I also made provision in the event that Mr. Martin succeeded in obtaining a job with a Monday through Friday regular schedule, in which case there is an adjustment in the schedule to allow for a more routine parenting schedule.

I see that the Guardian ad Litem has filed an objection to the Parenting Plan, a position consistent with his testimony and his recommendations, and, while I respect his general concern, I believe that his

proposal does not provide Holden with enough actual time with his father. I see that Mr. Martin has certain objections, but I am confused by his suggestions because it appears that they, in part, contradict what I understood to be his actual shift schedule. I also see that Patricia Martin objects to the Parenting Plan, but her alternative suggestion limits Mr. Martin's contact given his work schedule, and her issues with the schedule contradicts her own proposed order.

To the extent that the parties can agree to make adjustments in order to make life easier for them or for Holden, it would be in Holden's best interest to do so. In this regard, I suggest that the parties attempt to resolve those matters in mediation, with the parameters that have been set by the Court including: that Holden's residence is not going to be removed from the State of New Hampshire; that the parenting schedule should make allowances for Mr. Martin's shift schedule as a police officer so that he is not given parenting time that he cannot utilize; and that the parties' exchanges should occur at school or day care as much as possible.

Therefore, all parties' requests to modify the Parenting Plan are denied.

Recommended:

7/9/09	/s/ Deborah Kane Rein
Date	Deborah Kane Rein, Marital Master

Master's recommendations approved and so ordered.

7/9/09	/s/ Susan B. Carbon
Date	Susan B. Carbon, Presiding Justice

APPENDIX D

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0556, In the Matter of Patricia Martin and Michael Martin, the court on September 23, 2010, issued the following order:

Patricia Martin's motion for reconsideration is denied.

Reconsideration denied.

Broderick, C.J., and Dalianis, Duggan, Hicks and Conboy, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
Concord Family Division, 629-2007-DM-00105
Honorable Edward M. Gordon
Marital Master Deborah Kane Rein
✔Daniel C. Proctor, Esquire
Diane M. Puckhaber, Esquire
Steven M. Latici, Esquire
Alan I. Cantor, Esquire
File

APPENDIX E

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: **Concord Family Division**

Case Name: **In the Matter of Patricia Martin and Michael Martin**

Case Number: **629-2007-DM-105**
(if known)

PARENTING PLAN

This parenting plan is: **(Choose one)**

☐ Agreed upon ☑ Proposed by Patricia Martin
(Parent's name)

☐ Developed by Court

This parenting plan is: **(Choose one)**

☐ Temporary. The completed paragraphs apply until the case is concluded. If you are requesting a temporary order on parenting issues, you should include as many of these parenting plan topics as you will need to carry your family through until all parenting issues are resolved.

☑ Final. All completed paragraphs shall be incorporated in the Court's final order.

☐ Changing a prior final parenting plan or a prior final custody/visitation order.

The parental rights and responsibilities statute, RSA 461-A, requires any party in a divorce, legal separation, or parenting (formerly known as "custody") case to file a parenting plan, whether s/he is seeking an order establishing parental rights and responsibilities or an order modifying such rights and responsibilities. As you complete the Parenting Plan, please bear in mind this state's policy (below) as set forth in RSA 461-A:2. This policy will guide the court in making decisions affecting your parental rights and responsibilities.

Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:

(a) Support frequent and continuing contact between each child and both parents.

(b) Encourage parents to share in the rights and, responsibilities of raising their children after the parents have separated or divorced.

(c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals,

unless there is evidence of domestic violence, or child abuse/neglect.

(d) Grant parents and courts the widest discretion in developing a parenting plan.

(e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

This parenting plan is for the following child(ren) born to, or adopted by, the parties:

	Full Name	Date of Birth
1.	**Holden Martin**	**06/21/2007**
2.		
3.		
4.		
5.		
6.		

A. Decision-Making Responsibility:

1. Major Decisions: These include, but are not limited to, decisions about the child(ren)'s education, non-emergency health and dental care, and religious training: **(Choose one)**

   ☑ (a) Joint Decision-Making: Both parents shall share in the responsibility for making major decisions about the child(ren).

☐ (b) Sole Decision-Making: _____ (parent's name) shall have sole decision-making authority on major decisions about the child(ren).

2. Day-To-Day Decisions: Each parent shall make day-to-day decisions for the child(ren) during the time he/she is caring for the child(ren). This includes any emergency decisions affecting the health or safety of the child(ren). A parent who makes an emergency decision shall share the decision with the other parent as soon as reasonably possible.

3. Other provisions: **Neither party shall have the child's hair cut w/o the agree of the other party.**

B. Residential Responsibility & Parenting Schedule:

1. Routine schedule: **(Choose one)**

☐ (a) The child(ren) shall reside solely with _____ (parent's name).

☑ (b) The child(ren) shall reside primarily with Patricia Martin (parent's name), except for the following days and times when the other parent shall have parenting time with the child(ren):

Further, for legal residential purposes Patricia Martin's residence shall be the child's residence for all pre-school and

school registration when the child is ready for the same. SEE ATTACHED.

☐ (c) The above choices do not fit this parenting situation. Instead, the parents shall have equal or approximately equal residential responsibility for the minor child(ren) as follows:

_____

_____

_____

2. Holiday and Birthday Planning: **(Choose (a), (b), or (c))**

☐ (a) No holiday and birthday schedule shall apply. The routine schedule set forth above shall apply.

☐ (b) Holiday and birthday parenting time shall be as the parties agree.

☑ (c) The holidays and birthday(s) listed below should be shared as described. Specify start and end times and days/dates as necessary. (For example, Thanksgiving: One parent—even years, other parent—odd years, starting on the Wednesday prior to Thanksgiving at 6pm, ending the Friday after Thanksgiving at 6pm). Parenting time on holidays and birthdays which are not checked and described shall be according to the routine schedule set forth above.

☑ Mother's Day **Mother's Day Weekend Fri. - Sunday, always with Patricia Martin**

☑ Father's Day **Father's Day weekend Fri.- Sunday, always with Michael Martin**

☐ July 4th _____

☑ Thanksgiving

Mike in even years beginning Wednesday evening before Thanksgiving and ending Sunday at 12:00 noon.

☑ Christmas Eve **Patricia Martin in even years and Michael Martin in odd years.** (Christmas Eve begins at 12:00 noon and ends 5:30 p.m. Christmas Day.)

☑ Christmas Day **Patricia Martin in even years and Michael Martin in odd years.**

☐ Child(ren)'s Birthday(s) _____

☐ One Parent's Birthday _____

☐ Other Parent's Birthday _____

☐ Other religious, civil and family celebrated special occasions:

_____

_____

3. Three-day weekends: **(Choose (a), (b), or (c))**

☑ (a) No three-day weekend schedule shall apply. The routine schedule set forth above shall apply.

☐ (b) The parent exercising parenting time on the weekend before a Monday holiday shall have parenting time on that Monday holiday.

☐ (c) The three-day weekends listed below should be shared as listed and described. Parenting time on three-day weekends which are not checked and described shall be according to the routine schedule set forth above.

☐ M. L. King Jr. Civil Rights Day _____

☐ Presidents' Day _____

☐ Memorial Day _____

☐ Labor Day _____

☐ Columbus Day _____

☐ Other _____

4. Vacation Schedule:

(a) December Vacation: **(Choose one)**

☐ (1) No December vacation schedule shall apply. The routine schedule set forth above shall apply.

☐ (2) The parent exercising parenting time with the child(ren) on Christmas Eve (as outlined above) shall have the following additional parenting time with the child(ren) over the December vacation:

_____

_____

The parent exercising parenting time with the child(ren) on Christmas Day (as outlined above) shall have the following additional parenting time with the child(ren) over December vacation:

_____

_____

☐ (3) The above choices do not fit this parenting situation. Instead, the residential schedule for the child(ren)'s December vacation shall be as follows:

The parent who does not have Holden for the Christmas Eve/Christmas Day holiday described in B2(6) above, shall have the bal. of any December vac. when Holden enters school.

(b) February, April, and Summer Vacations. Specify the day of the week vacation

starts and ends, if necessary. **(Choose one)**

☐ (1) No February, April, or summer vacation schedule shall apply. The routine schedule set forth above shall apply.

☑ (2) The child(ren) shall reside with **Michael Martin** (parent's name) during February vacation, except for the following days and times when the child(ren) shall be with the other parent:

When Holden enters school.

The child(ren) shall reside with **Patricia Martin** (parent's name) during April vacation, except for the following days and times when the child(ren) shall be with the other parent:

When Holden enters school.

The child(ren)'s summer residential schedule shall be as follows: Beginning in 200 each party shall be entitled to two (2) non-consecutive weeks (7 days) summer vacation time. Each party shall notify the other at least sixty days in advance. In the event of a dispute, Patricia's choice governs even years and Michael Martin governs in odd years.

☐ (3) The above choices do not fit this parenting situation. Instead, the residential schedule for the child(ren)'s February, April, and summer vacations shall be as follows:

_____

_____

_____

(c) Other Vacations-describe the schedules for any other vacations: _____

5. Supervised Parenting Time: **(Choose one)**

☑ (a) Not applicable.

☐ (b) The residential schedule is subject to the restrictions or limitations set out as follows:

_____

6. Other Parental Responsibilities:

Each parent shall promote a healthy, beneficial relationship between the child(ren) and the other parent and shall not demean or speak out negatively in any manner that would damage the relationship between either parent and the child(ren).

Neither parent shall permit the child(ren) to be subjected to persons abusing alcohol or using illegal drugs. This includes the abuse of alcohol or the use of illegal drugs by the parent.

The parties agree to, or the court establishes, the following additional expectations:
(Choose all that apply)

☑ (a) A parent requesting a temporary change to the parenting schedule shall act in good faith and ask the other parent about such change as soon as possible. The parents are expected to fairly adjust parenting schedules when family situations, illnesses, or other commitments make modification reasonable.

☐ (b) If a parent requires child care by some person who does not reside in his or her residence, for a period reasonably expected to last longer than _____ hours, then the other parent shall be offered the opportunity to parent the child. This section does not apply to regularly scheduled day care.

☑ (c) Each parent shall supply the appropriate child(ren)'s clothing for them for their scheduled time with the other parent. These clothes are to be considered the child(ren)'s clothes and shall be returned with the child(ren).

☑ (d) Each parent shall be responsible for ensuring that the child(ren) attend regularly scheduled activities, including but not limited to sports and extra-curricular activities, while the child(ren) are with that parent.

☑ (e) As the child(ren) get older, their individual interests may impact the parenting schedule set forth in this parenting plan. Each parent shall be flexible in making reasonable adjustments to the

parenting schedule as the needs and interests of their maturing children require.

☐ (f) Other Parenting Responsibilities:

_____

_____

_____

C. Legal Residence of a Child for School Attendance: (Choose One)

☑ 1. The children shall attend school in the school district where the parent with sale or primary residential responsibility resides. Under this plan, that parent is _____.

☐ 2. This parenting plan is for equal or approximately equal periods of residential responsibility, and so the child(ren)'s legal residence for school purposes shall be with _____ (parent's name).

D. Transportation and Exchange of the Child(ren): (Choose all that apply)

☑ 1. Transportation arrangements for the child(ren) between parents shall be as follows:

Michael Martin shall pick up Holden at the start of his parenting time and Patty shall pick up Holden at the conclusion of his parenting time.

☐ 2. Unless both parents agree upon a different meeting place, the exchange of the child(ren) shall be at:

_____

_____

☑ 3. Transportation costs shall be shared as follows:

Each party shall be responsible for their own expenses.

☑ 4. Other _____

E. Information Sharing and Access, Including Telephone and Electronic Access:

Unless there is a court order stating otherwise:

Both parents have equal rights to inspect and receive the child(ren)'s school records, and both parents are encouraged to consult with school staff concerning the child(ren)'s welfare and education. Both parents are encouraged to participate in and attend the child(ren)'s school events.

Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the child(ren).

Both parents have equal rights to consult with any person who may provide care for treatment for the child(ren) and to inspect and receive the child(ren)'s medical, dental or psychological records, subject to other statutory restrictions.

Each parent has a continuing responsibility to provide a residential, mailing, or contact address and contact telephone number to the other parent.

Each parent has a continuing responsibility to notify the other parent of any emergency circumstances or substantial changes or decisions affecting the child(ren), including the child(ren)'s medical needs, as close in time to the emergency circumstance as possible.

1. Parent-Child Telephone Contact: **(Choose one)**

The children shall be given privacy during their conversations with either parent. While the child(ren) reside with one parent, the other parent shall be permitted to speak by telephone with the child(ren):

☑ (a) At reasonable times.

(b) At the following times only: _____

(c) Other: _____

2. Parent-Child Written Communication: **(Choose one)**

☑ (a) Both parents and child(ren) shall have the right to communicate in writing or by emailing during reasonable hours without interference or monitoring by the other parent.

☐ (b) Specific agreements/orders regarding written or e-mail access between child(ren) and parent(s):

_____

_____

F. Relocation of a Residence of a Child: (Choose one)

☐ 1. The relocation of a child's residence in which s/he lives at least 150 days per year is governed by RSA 461-A:12. In general, either parent may move the child's residence if it results in the parents living closer and it if will not affect the child's school enrollment. Prior to relocating the child's residence farther from the other parent or in such a way that school enrollment will be impacted, the parent shall provide reasonable notice to the other parent. For purposes of this section, 60 days notice shall be presumed to be reasonable unless other factors are found to be present. At the request of either parent, the court shall hold a hearing on the relocation issue.

☐ 2. This parenting plan shall expressly govern the relocation issue as follows: **(Choose one)**

☐ (a) In addition to the provisions of RSA 461-A:12, this plan shall include the following relocation details:

_____

_____

_____

☑ (b) Instead of RSA 461-A:12, this plan shall include the following relocation details:

Patricia Martin is permitted to move to the State of Rhode Island with Holden.

G. Procedure for Review and Adjustment of Parenting Plan: (Choose one)

☐ 1. The parents shall meet as set out below to review this parenting plan and the well-being of the child(ren). Any agreed-on changes shall be written down, signed by both and filed with the court. (Each should keep a copy.) **Choose (a), (b), (c), or (d).**

☐ (a) Meetings shall be in _____ (month).

☐ (b) Meetings shall be yearly.

☐ (c) Meetings shall be every 2 years.

☑ (d) Meetings shall not be on a set schedule but shall be as often as necessary for the benefit of the child(ren).

☐ 2. Other: _____

H. Method(s) for Resolving Disputes: (Choose one)

☐ 1. In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best

interest of the child(ren). If the parents are unable to work out the disagreement, they shall seek the help of a neutral third party to assist them. Only if the parents are unable to work out the disagreement after seeking third party assistance will they ask the court to decide the issue.

☑ 2. Other: **Either party may seek judicial relief under Part I, Article 14 of the NH Constitution.**

I. Other parenting agreements important to the parents or child(ren) are listed below or are set forth in the _____ number of attached pages.

_____

_____

_____

/s/ Patricia C. Martin
Petitioner

12/10/08
Date

/s/ Daniel C. Proctor
Attorney/Witness
for Petitioner

_____
Respondent

_____
Date

_____
Attorney/Witness
for Respondent

_____
Guardian *ad Litem*

_____
Date

Recommended by:

Signature of Marital Master	Date	Name of Marital Master

So Ordered:

Signature of Judge	Date	Name of Judge

NHJB-2064-FS 12/27/2007)

IN THE MATTER OF PATRICIA MARTIN
AND MICHAEL MARTIN

CASE NO.: 629-2007-DM-00105

APPENDIX TO PARENTING PLAN

B. RESIDENTIAL RESPONSIBILITY AND PARENTING SCHEDULE CONTINUED

B (1) Routine Schedule: Until Holden enters school.

Holden shall live primarily with his mother.

i. Shift #1 / Tuesday - Friday 6:00 a.m. until 4:00 p.m.

Michael shall have Holden, every other weekend beginning at 9:00 a.m. Saturday morning and continuing until 8:30 a.m. Monday morning.

ii. Shift #2 / Saturday, Sunday and Monday 6:00 a.m. until 4:00 p.m.; Tuesday 4:00 p.m. until 2:00 a.m.

Michael shall have Holden beginning every other Wednesday at 5:30 p.m. and continuing until Friday morning at 8:30 a.m.

iii. Shift #3 / Sunday - Thursday 10:00 p.m. to 6:00 a.m.

Michael shall have Holden every other weekend beginning Friday at 5:30 p.m. and continuing until Sunday night at 6:00 p.m.

iv. Shift #4 / Wednesday - Thursday 4:00 p.m. to 2:00 a.m.; Thursday, Friday 8:00 p.m. to 6:00 a.m.

Michael shall have Holden every other Sunday beginning at 9:00 a.m. and ending Tuesday morning at 8:30 a.m.

v. Shift #5 / Friday, Saturday 5:00 p.m. to 3:00 a.m.; Sunday, Monday 2:00 p.m. to midnight

Michael shall have Holden every other Tuesday beginning at 5:30 p.m. and ending Thursday at 8:30 a.m.

B (2) **Routine Schedule after Holden enters School.**

Mike shall have parenting time with Holden every other weekend beginning Friday evening and ending Sunday evening at 5:30 p.m.

APPENDIX F

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.
CONCORD FAMILY DIVISION

NO.: 629-2007-DM-105

[Filed June 5, 2009]

IN THE MATTER OF PATRICIA)
MARTIN AND MICHAEL MARTIN)
)

PETITIONER'S MOTION TO RECONSIDER

NOW COMES the Petitioner, Patricia Martin, by and through her attorney, Daniel C. Proctor, Esq., and moves for reconsideration of this Honorable Court's Final Decree (Document No. 116) sent out under Clerk's Notice dated May 27, 2009 stating as follows:

I. RELOCATION RSA 461-A:12(V):

1. That there are three methods which Courts use to deal with relocation issues. The American Law Institute, Principals of the Law of Family Dissolution, Section 2.17, pp. 402 (2008).

2. That the first test, sometimes known as the "Wallerstein model", adopts a very permissive relocation policy while the second model, adopts a very

restrictive relocation policy and the third model adopts a balancing approach. Id.

3. That the New Hampshire General Court is enacting 461-A:12(V) chose a balancing approach which is neither restrictive, nor permissive. Id. pp. 424.

4. That RSA 461-A:12(V) st ıtes as follows:

> "The parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that:
>
> a. That the relocation is for a LEGITIMATE PURPOSE; and
>
> b. Any proposed relocation is REASONABLE in light of that purpose. [Emphasis Added]

5. That this Honorable Court's interpretation of the word "legitimate", as that term is set forth in the above quoted Statute, is erroneous and this Honorable Court misapprehended both the law and the facts of this case.

6. That a review of the Legislative History of both RSA 461-A:12 (enacted in October of 2005) and its predecessor, RSA 458:23-a (enacted July 7, 2002 and repealed, October 2005) shows the General Court was concerned about differing standards being applied in relocation cases.

7. That the General Court enacted RSA 458:23-a in reaction to the case of Tomasko v. Dubuc, 145 NH 169 (2000) and its progeny.

8. That Tomasko (supra) originally stems from Connecticut authority Ireland v. Ireland, 717 A.2d 676 (Conn. 1998).

9. That an examination of the Ireland (supra) case shows that the current version of RSA 461-A:12(V) is substantially similar to the authority of Connecticut.

10. That similar to New Hampshire, the State of Connecticut has a balancing approach to relocation matters, with an identical test. Id. at 683.

11. That the standard in Ireland was a slight variation of the test promulgated by The American Law Institutes Principals of Family Dissolution which stated:

> "a parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a LEGITIMATE PURPOSE and to a location that is REASONABLE in light of the purpose". Id. at 682.

12. That in Ireland (supra), the Connecticut Supreme Court cited a tentative draft of the Principles of Law and Family Dissolution for examples of a "legitimate purpose" to relocate. Id. at 682, (see footnote 5).

13. That the examples of the legitimate purpose in Ireland include:

> "to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the child's household from a significant risk of harm, to pursue a significant employment or educational opportunity, or to be one's spouse (or equivalent partner) who is pursuing significant employment or educational opportunity in another location". Id.

14. That the word "legitimate purpose" focuses the subjective intent of the person proposing the move while its corollary, under 461-A:12(V)(b) of "reasonableness", is an objective standard.

15. That this Honorable Court has erroneously applied an objective standard to Patricia Martin's legitimate purpose.

16. That the primary thrust of Patricia Martin's purpose in moving is two fold:

> A. To be closer to the emotional support of her family; and/or
>
> B. To receive financial support from her family.

A. EMOTIONAL SUPPORT FROM PATRICIA MARTIN'S FAMILY:

17. That Patricia Martin is intimidated by Michael Martin. This is not mere anxiety, it is intimidation.

18. That Patricia Martin's counseling records, (which are very current), document the fear, depression, anxiety, and its affect, both physiological and emotional.

19. That the counseling records diagnosed Patricia Martin as suffering from PTSD, following her discovery of the adulterous behavior of her husband.

20. That Michael Martin admitted on cross-examination that Patricia Martin was actually intimidated by him.

21. That Michael Martin testified, on cross-examination, that he had no idea as to why Patricia Martin would be intimidated, but Patricia Martin did testify as to her reasons.

22. That Patricia Martin's testimony about her reasons for feeling intimidated included: his mood swings; "Jekyll and Hyde behavior"; violations of her household privacy; the disregard for the child's best interest in a set schedule; and Michael Martin's repeated disregard for the Orders of this Court.

23. That as shown by the Ireland case quoted above, health reasons are a legitimate purpose and health reasons include mental health.

24. That whether or not Michael Martin is deliberately causing Patricia Martin's intimidation is irrelevant. That is an objective view.

25. A subjective view of legitimacy is whether Patricia Martin has actual health problems, regardless of the cause.

26. That the undisputed facts and evidence before this Court, including Michael Martin's admission, is that Patricia Martin is subjectively in counseling.

27. That mental health problems of loneliness, anxiety and depression, caused by being isolated in a State where one has no family, justifies the relocation of a child to a place where there is family support. Gruber v. Gruber, 583 A.2d 434, 440 (1990).

28. That Patricia Martin's health problems are real, again, in terms of her emotional and physical problems, as shown from her counseling records.

29. That while Patricia Martin is undertaking "reasonable" efforts to deal with her fear, (with her counselor), no one should have to live in intimidation and anxiety.

30. That Patricia Martin's testimony and counseling records substantiate her legitimate subjective intent and need for the emotional support of her family.

B. FINANCIAL SUPPORT FROM PATRICIA MARTIN'S FAMILY:

31. That this Honorable Court's finding of legitimacy limits the focus to financial issues associated with employment.

32. That this Honorable Court's Orders and focus on the issue of job enhancement is far too narrow.

33. That had the General Court wish to make the standard limited to employment purpose, they would have instead, required a "legitimate employment purpose", instead of a "legitimate purpose".

34. That the uncontradicted facts were that Patricia Martin would be moving back into the household with her parents and that said household had a history, of being a mother/daughter house, a legitimate purpose.

35. That further, the undisputed testimony was that Patricia Martin would have no rental payment or daycare expenses, a legitimate purpose.

36. That the undisputed testimony and evidence before this Court was that such an absence of rental payments and living expenses would save Patricia Martin approximately $24,000.00 a year, in rent, a legitimate purpose.

37. That additionally, the absence of child care expenses would save Patricia Martin approximately $4,800.00 per year, a legitimate purpose.

38. That nowhere in the provisions of 461-A:12 is there a requirement that the primary parent even be employed, for the purpose to be "legitimate".

39. That Patricia Martin has no family or support network here in the State of New Hampshire and she cannot take an out of state job until she knows she will be allowed to relocate. This Court wants her to take a job before she knows she can move.

40. That other Courts have recognized that living free rent and without child care are circumstances taken alone, permit a party to relocate out of State. See Kline v. Kline, 460 NYS 2d. 607 (NY App. Div. 1983). See also Blundell v. Blundell, 540 NYS 2d. 850 (NY App. Div. 1989).

41. That the State of Pennsylvania has similarly replaced a non-onerous burden on a parent to initially show a "good faith reason" for the move [similar to New Hampshire's "legitimate purpose"] and it held that said purpose is sufficient if the custodial parent shows that they are seeking to move closer to a large extended family that can help raise the child. Caures v. Lewis, 770 A.2d 214, 233, 231 (NJ 2001). See also Cerminara v. Cerminara, 669 A.2d 837(NJ 1995) and Holder v. Polanski, 544 A.2d 852 (NJ 1988).

C. REASONABLENESS OF THE PROPOSED MOVE 461-A:2(V)(b):

42. That underlying the authorities (all of which are cited above) place the context of "legitimacy" as whether the primary parent is vindictively attempting to move to deny the primary parent contact with their child.

43. That contrary to this Honorable Court's Order in the Final Decree which states that Patricia Martin wants to move in order to avoid "ongoing interaction with the father of her child", Patricia Martin has proposed ongoing, reasonable contact, despite Mr. Martin's schedule, between father and son.

44. That this Honorable Court has included routine interaction in the concept of "legitimate purpose" when in fact, the same is more properly evaluated in the objective standard of reasonableness of the relocation under 461-A:12(V)(b).

45. That if Patricia Martin wanted to be vindictive, she would have chosen to move to the other side of the United States or some locale, so distant, that Michael Martin would have little to no contact with his son.

46. That contrary to the above, Patricia Martin's relocation to the State of Rhode Island is objectively reasonable under 461-A:12(V)(b) because she has proposed an ongoing and consistent schedule for Michael Martin to have time with his son, notwithstanding his erratic schedule.

47. That further, Patricia Martin's relocation is reasonable, as she is in counseling to try to cope in co-parenting with Mr. Martin.

48. That this Honorable misapprehended Patricia Martin's relocation proposal (and the methods which make said relocation schedule reasonable) with her not being concerned about the schedule. This is incorrect. SEE ARGUMENT BELOW.

II. PARAGRAPH B AND D OF THE PARENTING PLAN RSA 461-A:6:

49. That under the section of the Final Decree involving the parenting schedule, this Honorable Court states:

> "I would have thought Patricia Martin would have looked on the Guardian Ad Item's recommendation more favorably then she apparently does, because it would seem as though it would be inconvenient for her to schedule her life around Mr. Martin's work schedule. However, she doesn't seem to have that concern given her proposal, and I have accepted her feelings on the subject".

50. That Patricia Martin's relocation proposal to work around Mr. Martin's schedule was MUCH more limited and now, this Court dramatically expands the proposal so that it is confusing, unworkable, and not in the child's best interest. Further, Patricia Martin nowhere proposed such an erratic schedule for school purposes (including kindergarten).

51. That again, this Honorable Court misconstrues Patricia Martin's attempt at reasonableness (if she was living Rhode Island where she would have help from her parents and family members and including coordinating exchanges) with her schedule in New Hampshire, without such a family support network.

52. That moreover, as she testified during trial, she is very concerned about Michael Martin pulling Holden out of his daycare on an irregular basis and by an extensive irregular schedule for the child.

53. That this Honorable Court has set up visitation beginning at 5:30 p.m. but daycare ends at 5:00 p.m.

54. That this Honorable Court's schedule will exacerbate matters like potty training for this child.

55. That the Court's schedule will be disruptive in future years, when the child needs to be in preschool, kindergarten and/ or school.

56. That it is not in the child's best interest to have the schedule promulgated by this Honorable Court in the Parenting Plan, RSA 461-A:6.

57. That in terms of the regular schedule (if this Honorable Court is not going to allow Patricia Martin to relocate to the State of Rhode Island), it is in the child's best interest to have Mr. Martin's parenting time on an alternating weekend basis, (since Patricia Martin will need to keep her job under the Court's rationale). Further, he should have one Wednesday overnight each week with both pick up and drop off at daycare and/ or school.

58. That further, this Honorable Court Order appears to allow Mr. Martin have the child out of daycare, even when he may be working.

59. That if Mr. Martin is not going to pick the child up from daycare because he is working, it makes no sense to have him allow his proxy to pick the child up, disrupting daycare and the child's schedule, if he is not going to be there.

60. That additionally, this Honorable Court has entered Orders regarding Holiday visitation and said

Orders will prevent Patricia Martin from ever traveling to Rhode Island, to be with her family, for the Christmas Holiday and/ or Thanksgiving Day Holiday because these days are shared, rather than alternated annually.

61. That lastly, in the interest of Patricia Martin's emotional mental health, she does not want to have all exchanges at the parties households (if Ms. Martin does not relocate and live with other family members). If this Court is not going to allow relocation, then all exchanges should be at a public place, as the transition is easier on the child. At the beginning of Mr. Martin's parenting time during the work week, the parties should meet at a public place more specifically, the Bow Park & Ride and on the weekends the parties should meet at the Burger King off of 1-93 in Derry. At the end of Mr. Martin's parenting time, the exchange should also occur in a public place, the Bow Park & Ride.

III. PARAGRAPH G PROCEDURE FOR REVIEW AND ADJUSTMENT OF PARENTING PLAN, AND PARAGRAPH H, METHODS FOR RESOLVING DISPUTES RSA 461-A:6 or 461-A:11 ?:

62. That in Paragraph G and Paragraph H of the Parenting Plan, this Honorable Court mandates that the parties participate in some mandatory mediation process from a "third-party" and/ or a "professional mediator", and no orders for the child's school years have been entered.

63. That in entering such an Order, without making any provisions for even providing temporary

judicial relief, this Honorable Court has violated Patricia Martin's procedural and substantive Due Process rights.

64. That parenting rights of children (fka custody/ visitation) are fundamental interests protected under both the Federal Constitution as well as the Constitution of the State of New Hampshire. Troxel v. Granville, 530 US 57 (2000) and Locke v. Ladd, 119 NH 136 (1979) and Plante v. Engel, 124 NH 213 (1983).

65. That the above-referenced Orders and sections of the Parenting Plan violate Patricia Martin's Procedural Due Process rights as she is denied ALL opportunity to be heard by the Court and there is no procedure established for even choosing a mediator, much less any defined mediation process and/ or standard of good faith participation in medication.

66. That in addition, Patricia Martin's substantive due process rights are violated by denying her access judicial relief, even temporary relief, and, the right of court access is also fundamental. Christopher v. Harbury, 536 US 403 (2002); Morello v. James, 810 F.2d 344 (2nd. Cir. 1987) and Opinion of the Justices, 137 NH 260 (1993).

67. That for all of the above-cited reasons, Patricia Martin's constitutional rights to Procedural and Substantive Due Process and Access to the Court are violated by this Honorable Court's Order contrary to the Fourteenth Amendment to the Constitution of the United States of America and Part 1, Article 14 of the Constitution of the State of New Hampshire.

68. That moreover, if the schedule in Part B of the Parenting Plan does not apply to Holden's School years, what standard of review will be applied to future hearings, RSA 461-A:6 or 461-A:11?

WHEREFORE Patricia Martin prays:

A. That a hearing be scheduled on this Motion;

B. That this Honorable Court reconsider its Order and permit her to relocate to the State of Rhode Island;

C. That, alternatively, if this Honorable Court does not permit relocation then this Honorable Court revise the parenting schedule in the best interests of the child;

D. That this Honorable Court reconsider its Order in Paragraph G of the Parenting Plan and modify the Order as requested above;

E. That this Honorable Court reconsider and amend the Parenting Plan in Paragraph G and H so as to afford both parties the right to judicial relief, if they so choose;

F. For such other and further relief as is just and equitable.

Respectfully Submitted
PATRICIA MARTIN
By Her Attorney

Dated: June 5, 2009 /s/ Daniel C. Proctor
Daniel C. Proctor, Esq., #6589
P.O. Box 3544

Concord, NH 03302-3544
603-228-8226

[*Certificate of Service Omitted in Printing of this Appendix*]

* * *

APPENDIX G

THE NEW HAMPSHIRE SUPREME COURT

CONCORD FAMILY DIVISION
NO.: 2009-556

[Filed August 30, 2010]

IN THE MATTER OF	)
	)
PATRICIA MARTIN AND	)
MICHAEL MARTIN	)
	)

PATRICIA MARTIN'S MOTION FOR RECONSIDERATION UNDER SUPREME COURT RULE 22

NOW COMES Patricia Martin, Appellant, by and through her attorney, Daniel C. Proctor, Esquire, and requests reconsideration pursuant to Supreme Rule 22, stating as follows:

I. RELOCATION.

1. As this Honorable Court correctly points out, the Trial Court found that the primary reason the Appellant wanted to relocate, was to "get away" from the Appellee.

2. That as pointed out by the Appellant, she is intimidated by the Appellee and he admitted

to the same during cross-examination. *See Transcript pages 629 through 631.*

3. That the Appellant respectfully submits that intimidation (whether the Appellee is causing it or not) is a legitimate reason for wanting to "get away".

4. That respectfully, if this Honorable Court feels that subjective intimidation is insufficient or is not legitimate, then the Opinion of this Honorable Court should reflect that.

5 That, in the alternative, if this Honorable Court feels that intimidation is a legitimate reason for wanting to "get away", then it should respectfully reconsider its decision.

6. Further, this Honorable Court's Order and Decision gives no clarity to the Relocation Statute or whether the plain meaning of the word "legitimate" is to be interpreted as a subjective matter or an objective one.

7. That the word "legitimate", as it ordinarily denotes, can have either a subjective or objective meaning.

8. That, respectfully, this Honorable Court should at least clarify the Statute in the general interest of Justice. Robinson v. Robinson, 66 N.H. 600 at 610 (1891), In re Guy, 158 N.H. 411 (2009).

II DUE PROCESS.

9. That in denying the Appellant's procedural due process claims, this Honorable Court relies on the case of Woods v. Holy Cross Hospital, 591 F.3d. 1164 (5th Cir.1979).

10. That the facts of the above-cited case as well as the restrictions involved is decidedly different than that which is presented in this case.

11. That in Woods v. Holy Cross Hospital (Supra), no fundamental right was involved.

12. That in the case at bar, and for reasons already cited in the Appellant's brief, Appellant's fundamental right of access to the courts, as well as her rights as a parent, are implicated.

13. That in Woods v. Holy Cross Hospital (Supra), a well defined state procedure was in place, in the form of a Medical Arbitration Panel.

14. That in the case pending before this Honorable Court, there is no procedure, no definition, no defined process, no duration established, there is nothing.

15. In the standard state form, put out by the Admistrative Office of the Courts, which both the Trial Court has adopted and this Honorable Court has sustained, the Appellant . . . . shall seek the help of a

NEUTRAL THIRD PARTY . . . . . [Emphasis added.]

16. That there is no definition for the words "neutral thirty party" and the same is subject to arbitrary interpretation.

17. That there is no process for selecting a "neutral third party" and the same is subject to arbitrary interpretation.

18. That there is no standard, procedures for discovery, evidential guidance, or any form of criteria for any process.

19. That the words "neutral third parties" are strictly those in the Standard Form issued by the Administrative Office of the Courts.

20. That the somewhat similar concept, "mediation" is partially codified in the Training Statute for "Mediators" under R.S.A. Chapter 328-C.

21. In addition, by statute only, "Mediation" can be ordered by a court, after a case has been filed pursuant to R.S.A. 458:15-c and 461-A:7 (IX).

22. That even under the aforementioned "mediation" Statutes, there are no procedures for discovery, method of selecting a mediator, or timetable.

23. That notwithstanding the aforementioned statutory references to mediation, both

mediation statutes are completely silent as to any pre-filing, forward-looking restriction, on accessing the Court's before seeking mediation assistance.

24. That, however, the words "mediation" and "neutral third party" are not synonymous.

25. That respectfully, this Honorable Court's reliance on Woods v. Holy Cross Hospital (Supra) is misplaced for the reasons stated above. The Appellant's rights to access the Courts of this State (and also the matters affecting the health, parenting time, and safety of her child), cannot be denied under the Due Process Clause. Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

26. That Patricia Martin, Appellant, has procedural and substantive due process rights. Denying her an opportunity to be heard, unless she seeks the assistance of an undefined process and/or person called a "neutral third party" violates her rights under the Fourteenth Amendment to the Constitution of the United States of America. Id.

27. That once the Due Process Clause is implicated, the question remains what process is due? Id.

28. That even nominal violations trigger the protection of Procedural Due Process. Tri

County Industries, Inc. v. District of Columbia, 104 F.3d (C.A.D.C. 1997).

29. That there is no defined process of pre-filing neutral third party assistance leaving open the question, what process is due? Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

WHEREFORE, Appellant prays:

A. That this Honorable Court reconsider its Decision, dated August 19, 2010, for the reasons set forth above;

B. For such other and further relief as is just and equitable.

Respectfully submitted,
PATRICIA MARTIN
By Her Attorney

Date: 8/30/10

/s/ Daniel C. Proctor
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[*Certification Omitted in Printing of this Appendix*]

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